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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 140422365-4365-01]

RIN 0648-XD267

Endangered and Threatened Wildlife; 90-Day Finding on a Petition to Identify the Central North Pacific Population of Humpback Whale as a Distinct Population Segment (DPS) and Delist the DPS under the Endangered Species Act.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 90-day petition finding; request for information.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to identify the Central North Pacific population of humpback whale (*Megaptera novaeangliae*) as a Distinct Population Segment (DPS) and delist the DPS under the Endangered Species Act (ESA). We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we are continuing our status review for the humpback whale to determine whether this population is a DPS and whether delisting is warranted. To ensure this status review is comprehensive, we solicit scientific and commercial information regarding this species.

DATES: Information and comments must be received by [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by FDMS Docket

Number NOAA-NMFS-2014-0051, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0051](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0051), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Address written comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Interested persons may obtain a copy of the petition online at the NMFS Alaska Region website: <http://alaskafisheries.noaa.gov/protectedresources/whales/humpback/>.

FOR FURTHER INFORMATION CONTACT: Aleria Jensen, NMFS Alaska Region, (907) 586-7248 or Jon Kurland, NMFS Alaska Region, (907) 586-7638.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2009, we announced the initiation of a status review of the humpback whale globally to determine whether an endangered listing for the entire species was still appropriate (74 FR 40568). The agency formed a Biological Review Team to evaluate the status of the species and produce a final report, which has not yet been released.

On April 17, 2013, we received a petition from the Hawaii Fishermen's Alliance for Conservation and Tradition, Inc., to classify the North Pacific humpback whale population as a DPS and delist the DPS under the ESA. We found that the petitioned action may be warranted (78 FR 53391; August 29, 2013) and incorporated the consideration of the petitioned action into the ongoing status review commenced in 2009.

On February 26, 2014, we received a petition from the State of Alaska to identify the Central North Pacific population of humpback whale as a DPS and delist the DPS under the ESA. Humpback whales in the North Pacific are divided into three separate stocks under the Marine Mammal Protection Act (MMPA): the Central North Pacific (or Hawaii) stock, the western North Pacific (or Asia) stock, and the California/Oregon/Washington and Mexico (or Mexico/Central America) stock. These stocks have formed the basis for monitoring population trends pursuant to the MMPA since the mid-1990s.

#### Distribution and Life History of the Central North Pacific Population of the Humpback Whale

For information on the distribution and life history of the Central North Pacific (or Hawaii) population of the humpback whale, see Fleming and Jackson (2011), Global Summary of the Humpback Whale, information that was recently compiled for NMFS's 5-year review of the humpback whale and published as a NOAA Technical Memorandum, and our 90-day finding on the petition to delist the North Pacific population of the humpback whale (78 FR 53391; August 29, 2013).

## ESA Statutory, Regulatory, and Policy Provisions

In accordance with section 4(b)(3)(A) of the ESA, to the maximum extent practicable, within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce is required to make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the Federal Register (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted, as is the case here, we are required to promptly commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 12 months of receipt of the petition, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a comprehensive review of all best available information, as compared to the narrow scope of review at the 90-day stage, which focuses on information set forth in the petition, this 90-day finding does not prejudice the outcome of the status review.

Under the ESA, the term “species” means a species, a subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532(16)). A joint policy issued by NMFS and the U.S. Fish and Wildlife Service (the Services) clarifies the Services’ interpretation of the phrase “Distinct Population Segment,” or DPS (61 FR 4722; February 7, 1996). The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: discreteness of the population segment in relation to the remainder of the species; and, if discrete, the significance of the population segment to the species.

A species is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether a species is threatened or endangered based on any one or a combination of the following section 4(a)(1) factors: (1) the present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

Under section 4(a)(1) of the ESA and the implementing regulations at 50 CFR 424.11(d), a species shall be removed from the list if the Secretary of Commerce determines, based on the best scientific and commercial data available after conducting a review of the species' status, that the species is no longer threatened or endangered because of one or a combination of the section 4(a)(1) factors. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) Extinction. Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) Recovery. The principal goal of the Services is to return listed species to a point at which protection under the ESA is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer

endangered or threatened.

(3) Original data for classification in error. Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

ESA-implementing regulations issued jointly by the Services (50 CFR 424.14(b)) define "substantial information," in the context of reviewing a petition to list, delist, or reclassify a species, as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition (1) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Judicial decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action may be warranted. As a general matter, these decisions hold that a petition need not establish a strong likelihood or a high probability that the petitioned action is warranted to support a positive 90-day finding.

To make a 90-day finding on a petition to list, delist, or reclassify a species, we evaluate

whether the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted, including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates that the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be disregarded at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioners' assertions. In other words, conclusive information indicating that the species may meet the ESA's requirements for delisting is not required to make a positive 90-day finding.

In evaluating whether a petition to delist a population is warranted, first we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for delisting under the ESA. If so, we then evaluate whether the information indicates that the species no longer faces an extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the

causative impacts and threats identified in section 4(a)(1).

#### Analysis of Petition

The State of Alaska maintains that the Central North Pacific, or Hawaii, stock, constitutes a DPS under the ESA. Based on photo-identification and genetic data, we currently recognize the Central North Pacific humpback whale population as one of three discrete stocks in the North Pacific under the MMPA. The petition notes this demographic distinctness, and asserts that the Central North Pacific humpback whale population qualifies as a DPS due to its strong behavioral and genetic fidelity to specific breeding and feeding areas over generations. The State of Alaska argues that the population is markedly separated from other North Pacific populations based on physical, behavioral, and management factors, and qualifies as a significant and discrete population because of these factors.

Further, the State asserts that this population has recovered to the point that it is no longer threatened with extinction, based on an analysis of available scientific and commercial information. The petition asserts that the Central North Pacific humpback whale is now found throughout its historical range, having rebounded following the end of commercial whaling. The petition points to recent population estimates which place the current Central North Pacific humpback whales at a higher population level than that which existed at the onset of modern whaling (pre-1905). The State of Alaska also refers to the 1991 Humpback Whale Recovery Plan and claims that sufficient information exists to demonstrate that the Central North Pacific population has met the recovery goals contained within the plan.

Finally, the State analyzes the five ESA section 4(a)(1) factors and concludes that the threats leading to the population's endangered status have been either completely eliminated or sufficiently reduced or controlled so that the long-term survival of the species is ensured and the



protections provided by the ESA are no longer necessary. They assert that threats from destruction, modification, or curtailment of the population's habitat or range have been sufficiently controlled (e.g., oil and gas development, water quality, coastal development, contaminants, impacts to prey base); that overutilization for commercial, recreational, scientific, or educational purposes is no longer a threat (e.g., whaling); that disease and predation are not a threat (e.g., from killer whales or sharks); that existing regulatory mechanisms are adequate to protect the population (e.g., MMPA, ESA, Magnuson-Stevens Fishery Conservation and Management Act, the Fisheries Act of Canada, Canadian Species at Risk Act); and that other natural or manmade factors affecting its continued existence have been sufficiently reduced or do not pose a threat (e.g., fishery interactions, ship strikes, acoustics, pollutants, climate change). In summary, the petition concludes that the recovering population in combination with the removal of previously identified threats qualifies the Central North Pacific humpback whale population for delisting under the ESA.

#### Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. Although we identified some incomplete information and unsupported conclusions within the petition, we find that the information presented in the petition would lead a reasonable person to believe that the petitioned action may be warranted. Considering the requirements of 50 CFR 424.14(b) for addressing petitions at the 90-day finding stage, we have therefore determined that the petition, the literature cited in the petition, and other literature and information readily available in our files constitute substantial information indicating that the petitioned action may be warranted.

As a result of this finding, we will continue our status review of the humpback whale to determine whether the Central North Pacific humpback whale population constitutes a DPS under the ESA, and if so, the risk of extinction to this DPS. Based on the results of the status review, we will then determine whether delisting or downlisting (from endangered to threatened) the Central North Pacific population of the humpback whale is warranted.

#### Request for Information

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on the humpback whale, with a focus on the Central North Pacific population, in the following areas: (1) Taxonomy, abundance, reproductive success, age structure, distribution, habitat selection, food habits, population density and trends, and habitat trends; (2) historical and current population status and trends; (3) historical and current distribution; (4) migratory movements and behavior; (5) genetic population structure, as compared to other populations; (6) the effects of vessel strikes, entanglements, acoustic impacts, and climate change, on the distribution and abundance of Central North Pacific humpback whales and their principal prey over the short- and long-term; (7) the effects of other threats, including whaling, disease and predation, contaminants, fishing, industrial activities, or other known or potential threats; (8) the effects of research on Central North Pacific humpback whales; (9) management or conservation programs for Central North Pacific humpback whales, including mitigation measures associated with private, tribal or governmental conservation programs which benefit this population; and (10) current or planned activities that may adversely impact humpback whales. We request that all information and data be accompanied by supporting documentation such as (1) maps, bibliographic references, or reprints of pertinent publications;

and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Authority: The authority for this action is the Endangered Species act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: June 20, 2014.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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